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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Computer III Remand Proceedings:)
Bell Operating Company Safeguards)
and Tier 1 Local Exchange)
Company Safeguards)

CC Docket No. 90-623

Application of Open Network Architecture)
and Nondiscrimination Safeguards)
to GTE Corporation)

CC Docket No. 90-256

92-256/

COMMENTS OF
THE INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA

The Information Technology Association of America ("ITAA"), by its attorneys, hereby responds to the public notice soliciting additional comment on the rules governing telephone company use of customer proprietary network information ("CPNI") which the Commission issued on March 10, 1994.¹

I. INTRODUCTION

ITAA is the principal trade association of the computer software and services industry. Together with its twenty affiliated regional technology councils, ITAA represents more than 3,00 companies located throughout the United States. Its member companies provide the public with a rich variety of computer services, such as software

¹See "Additional Comment Sought on Rules Governing Telephone Companies' Use of Customer Proprietary Network Information (CC Docket No. 623 and CC Docket No. 92-256)," FCC Public Notice, FCC 94-63 (Mar. 10, 1994).

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design and support, systems integration, facilities management, and network-based information services. The enhanced services furnished by ITAA's members are used by business, government and residential consumers, and include such diverse offerings as credit card authorization, computer-aided design and manufacturing, database retrieval, electronic mail, electronic data interchange, gateways, information management, payroll processing, value-added network services, and other remote access data processing services.

In its public notice, the Commission has observed that recent alliances between local telephone companies and non-telephone company partners raise a number of concerns about whether the existing CPNI rules strike the most appropriate balance between customer privacy interests, competitive equity, and efficiency. ITAA shares the Commission's concerns about the adequacy of the current CPNI rules. ITAA is therefore pleased that the Commission has decided to review these rules and urges the Commission to take this opportunity to remedy the unfair competitive advantage which the existing CPNI rules now bestow upon local exchange carriers ("LECs") in the enhanced services market.

II. THE EXISTING CPNI RULES NEED TO BE REVISED.

In their role as monopoly providers of telephone exchange service, local exchange carriers ("LECs") acquire a great deal of valuable information about their customers. Often, the LECs are the first to know when a customer moves into a geographic area. They soon learn the kinds of communications services that a customer needs. Eventually, they come to know the customer's calling patterns and calling volumes. The

LECs also know the destination of their customers' calls, whether and how promptly they pay their bills, and the kinds of specialized calling services that their customers use. For example, they know whether and how often customers make use of 700, 800, 900, 976, and similar calling services.

When customers reach a certain size, they are frequently assigned an account manager. What this means is that one or more LEC employees are dedicated to serving a specific account. The account team acts as if it were literally a part of the customer's organization. As a consequence, the team's members soon learn all about the customer, its needs, its programs, and its services. The account team also handles orders for installation, maintenance, and repairs.

Because of their access to CPNI, the LECs often know more about a customer's use of communications than the customer itself. The LECs' enhanced service operations could unfairly use this knowledge to gain significant competitive advantages over the independent service providers with which they compete. In particular, the LECs' enhanced service operations could use CPNI to identify customers that move into the LECs' service area and then contact those customers before they are approached by the LECs' enhanced service competitors. The LECs could also use CPNI to target existing customers that are likely users of particular enhanced services. These customers may assume -- erroneously -- that the LECs are uniquely qualified to design and provide customized enhanced services suited to their needs because of the carriers' familiarity with the customers' basic communications requirements. More important, the LECs could use their access to CPNI to identify users of competing enhanced services, and

then tailor their marketing presentations -- or even their enhanced services -- based upon the carriers' knowledge of the prospective customers' network usage. The LECs' access to CPNI could thus give them a significant -- and unfair -- competitive advantage in the enhanced services marketplace, an advantage that they enjoy solely because of their local exchange monopoly.²

Sound public policy requires that, from a competitive perspective, the LECs' enhanced service operations not be afforded any greater access to CPNI than independent enhanced service providers. In other words, the LECs' enhanced service operations should be required to live by the same rules as independent enhanced service providers. Sound public policy also requires that, from a privacy perspective, the LECs not be permitted to use CPNI for their commercial gain without the customer's prior authorization. The need for prior authorization to preserve customer privacy has become particularly acute. As the Commission has recognized, the LECs have strayed beyond regulated telephony and have entered joint ventures and other arrangements with non-telephone company partners, such as cable companies, newspaper publishers, and the like, all of which can share the fruits of LEC access to customer CPNI. The

²Indeed, where the situation has been reversed, the Bell Operating Companies ("BOCs") have expressed concerns that their competitors' access to customer information could be used to the BOCs' competitive disadvantage. See Leslie Cauley and Viveca Novak, Justice Department Weighs Challenging AT&T-McCaw Pact on Antitrust Issues, Wall St. J., Apr. 7, 1994, at A3.

Commission should therefore revise the CPNI rules, which now apply only to the BOCs and -- through recent Commission action -- GTE,³ and extend them to all LECs.

The CPNI rules should also be revised in another respect. As currently framed, the Commission's CPNI rules require BOC personnel engaged in the marketing of enhanced services to obtain a customer's prior authorization before accessing its CPNI only if the customer has more than twenty access lines. For reasons which ITAA and others have found difficult to fathom, no prior authorization is required if the customer has twenty or fewer access lines. Independent enhanced service providers, by contrast, are required to obtain prior authorization in order to obtain access to the CPNI of any customer, regardless of size. The Commission's asymmetrical CPNI rules give the carriers a clear competitive advantage over independent enhanced service providers in marketing enhanced services to smaller customers, an advantage that will become more pronounced as LEC joint ventures and other arrangements proliferate. To ensure competitive equity, the Commission should revise the CPNI rules to deny the LECs' enhanced services personnel access to the CPNI of any customer, regardless of size, unless they first obtain the customer's prior written authorization.

The existing rules inexplicably provide the greatest amount of protection to the CPNI of the largest customers. Residential, single-line and small business users, however, are generally less sophisticated than large business customers, and arguably have a greater expectation of privacy. Those users should -- at a minimum -- be given

³See Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, CC Docket No. 92-256 (released Apr. 4, 1994).

the same opportunity as large users to make an intelligent choice as to the use of their CPNI.

The current rules grossly underestimate the value of CPNI of smaller customers. Residential customers represent a vast, developing market for enhanced service providers. According to all industry experts, the number of residential users of interactive information services is expected to increase significantly over the next five years. A LEC with access to a residential customer's calling patterns -- particularly the customer's use of 700, 800, 900, 976, and other specialized calling services -- will have a significant marketing edge. Similar considerations apply to small and medium-sized business users. The Commission's CPNI safeguards should, therefore, be revised to protect all basic network subscribers.

The Commission's CPNI rules should also be revised to apply to the LECs' provision of customer-premises equipment ("CPE"). The same competitive equity and privacy considerations that apply to enhanced services also apply to CPE. Moreover, there are many enhanced service applications that can be performed either on a networked host computer or on a customer-premises device. The decision as to where an application is performed should be driven by technology, and not by a loophole in the Commission's CPNI rules.

The Commission's CPNI rules are also deficient in their treatment of aggregate CPNI. As currently framed, the Commission's rules require the BOCs and GTE (again, not all the LECs) to make available to independent enhanced service providers any aggregate information that they provide to their own enhanced service operations. The

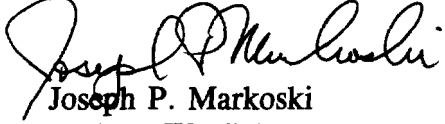
BOCs, however, are not required to advise the Commission of the aggregate CPNI that has been disclosed to their enhanced service operations or of the availability of other aggregate CPNI. Thus, unless an unaffiliated enhanced service provider knows what data have been disclosed to a BOC's own enhanced service operations and needs precisely the same data, it will be unable to obtain either the aggregate CPNI that has been disclosed or other aggregate CPNI that may be available. The Commission should therefore require the LECs to apprise the Commission of the aggregate CPNI which they disclose to their own enhanced service operations, as well as any other aggregate CPNI that may be available. All of this information should be provided to independent enhanced service providers and others on reasonable terms and conditions. Indeed, the LECs should be required to make available, upon reasonable request, any other aggregate CPNI needed by competing enhanced service providers and in the possession of the LECs.

III. CONCLUSION

For all of the reasons set forth above, the Commission should revise the existing CPNI rules to ensure competitive equity and preserve customer privacy in today's changing telecommunications marketplace.

Respectfully submitted,

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